

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Joshua Weinstein, Attorney, 415-865-7688, joshua.weinstein@jud.ca.gov

DATE: August 6, 2003

SUBJECT: Habeas Corpus: Procedure in the Superior Courts (amend rule 4.551 and approve form CR-175)

Issue Statement

Under current rule 4.551, if a superior court has not ruled on a petition for writ of habeas corpus within 30 days of its filing, the petition is automatically deemed granted, resulting in the court's issuance of an order to show cause and invoking several procedural requirements. Based on their practical experience, several courts have expressed dissatisfaction with the current procedure. Upon issuance of an order to show cause, the court is to appoint counsel and other procedural safeguards are invoked. However, often the 30 days pass and, because the petition automatically deemed granted, neither the court nor the parties are aware that the petition has been granted. Significant problems may arise—for example, the respondent may be unaware of filing deadlines or the unrepresented petitioner may not be appointed counsel. Moreover, an order to show cause typically is issued only if petitioner makes a prima facie showing that he or she is entitled to relief. (*People vs. Duvall* (1995) 9 Cal.4th 464, 475.)

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Amend rule 4.551 to provide habeas corpus petitioners with a vehicle to notify the superior court that there has not been a timely ruling on the petition; and
2. Approve form CR-175, *Notice and Request for Ruling*, to provide a form for the habeas corpus petitioner to make the notification under amended rule 4.551.

The text of the proposed rule is attached at pages 5 and 6; the proposed form is attached at page 7.

Rationale for Recommendation

Under current rule 4.551(a)(3), if the court fails to rule on a petition for habeas corpus within 30 days of its filing, it is automatically deemed granted. The committee originally proposed this provision in order to have a self-executing time enforcement device. However, as noted above, based on the court's practical experience, the committee concluded that the procedure should be changed.

These amendments to rule 4.551 would delete the self-executing order to show cause and create a new procedure allowing the petitioner to notify the court and request a ruling in cases where a timely ruling has not been made. The amendments would also increase the time the court has to decide the petition. Specifically, the amendments would:

- Require that the court within 60 days of the filing of the petition, instead of the current 30-day time period (rule 4.551(a)(3)(A));
- Provide for a notice and request for ruling procedure by which the petitioner, after the 60 days has passed without a ruling from the court, could request a ruling (rule 4.551(a)(3)(B));
- Require that, upon filing of the notice, the presiding judge of the court calendar the matter for a decision within 30 days if a timely ruling has not been entered (rule 4.551(a)(3)(B)(ii));
- Allow the presiding judge to assign the case to another judge for decision (rule 4.551(a)(3)(B)(ii));
- Provide that the parties are not required to appear for the ruling on the petition (rule 4.551(a)(3)(B)(ii)); and
- Allow the court to take the matter off calendar if a ruling is entered prior to the calendar date (rule 4.551(a)(3)(B)(ii)).

A new optional form to request that the court issue a ruling under the new procedure is also proposed. The petitioner could file form CR-175, *Notice and Request for Ruling*, with the original petition attached, thus invoking the motion procedure under rule 4.551(a)(3)(B).

This proposal also includes the addition of an advisory committee comment to clarify the court's authority to appoint counsel if it has issued an order to show cause. This comment would state the case law and statute supporting the appointment of counsel and clarify the authority for payment of counsel.

Alternative Actions Considered

The committee considered several other alternatives but found the proposed approach to be the most desirable. For example, the committee considered eliminating the provision that deemed the petition granted and not creating a new procedure. Under this option, if the court were not to rule in a timely manner, the petitioner could file a writ of mandate, requesting the reviewing court to order the superior court to rule on the habeas corpus petition. This was deemed less desirable, as the procedure established by the proposed rule is less complex and more efficient.

The committee also considered several different time frames in which the court must rule on the petition. One option was to retain the 30-day period but allow an extension upon a showing of good cause. Also considered was a 45-day time period. In deciding to recommend the 60-day time period, the committee noted the following factors: First, the vast majority of the petitions are from prisoners serving considerable terms of incarceration, so, that increasing the time period does not dramatically prejudice the petitioners. Second, it often takes the better part of the 30-day time period for clerks to process petitions filed in larger courts and delivered them to the appropriate judges. Thus, the committee deemed the 30-day time period insufficient for judges to have the necessary time to research and draft orders in these cases.

Comments From Interested Parties

The proposal was circulated during the Spring 2003 comment cycle. Seven comments were received, four agreeing with the proposed changes and three not agreeing. The four who agreed all work within the courts; the three who disagreed are practitioner organizations. All three practitioner organizations disagreed for the same reasons: (1) that there should be an automatic enforcement device for courts that delay ruling because it is too burdensome on petitioners (especially pro pers) to “remind” the court; and (2) the time for ruling should not be increased from 30 to 60 days.

The committee gave both comments serious consideration but ultimately disagreed. While the committee agrees with comments that courts should not need to be reminded to rule on petitions, this rule addresses the significant minority of cases that “fall through the cracks.” In many of those cases, even if they are “deemed granted” after 30 days, the court rules on them only after the petitioner about their status. The new procedure recognizes this reality and provides the petitioners with an appropriate mechanism to remedy any delay. The committee also concluded that the increased time period is necessary for the larger courts to process these cases.

A chart summarizing the comments of the committee’s responses is attached at pages 8–10.

Implementation Requirements and Costs

There may be slight implementation costs for conducting hearings on the motion for ruling.

Attachments

Rule 4.551 of the California Rules of Court is amended, effective January 1, 2004, to read:

Rule 4.551. Habeas corpus proceedings

(a) [Petition; form and court ruling]

(1)–(2) ***

(3) (A) Upon filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. The court must rule on a petition for writ of habeas corpus within ~~30~~ 60 days after the petition is filed. ~~If the court fails to rule on the petition for writ of habeas corpus within 30 days of its filing, an order to show cause will be deemed to have issued under subdivision (c).~~

(B) If the court fails to rule on the petition within 60 days of its filing, the petitioner may file a notice and request for ruling.

(i) The petitioner's notice and request for ruling must include a declaration stating the date the petition was filed and, the date of the notice and request for ruling, and indicating that the petitioner has not received a ruling on the petition. A copy of the original petition must be attached to the notice and request for ruling.

(ii) If the presiding judge or his or her designee determines that the notice is complete and the court has failed to rule, the presiding judge, or his or her designee, must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and request for ruling. If the judge assigned by the presiding judge rules on the petition prior to the date the petition is calendared for decision, the matter may be taken off calendar.

(4)–(5) ***

(b)–(c) ***

(d) [Return] If an order to show cause is issued as provided in subdivision (c), ~~or if the court fails to rule on the petition in a timely manner as~~

1 ~~required in subdivision (a)(3)~~, the respondent may, within 30 days
2 thereafter, file a return. Any material allegation of the petition not
3 controverted by the return is deemed admitted for purposes of the
4 proceeding. The return must comply with Penal Code section 1480 and
5 must be served on the petitioner.
6

7 (e)–(h) ***
8

9 **Advisory Committee Comment**
10

11 The court must appoint counsel upon the issuance of an order to show cause.
12 (*In re Clark* (1993) 5 Cal.4th 750, 780 and *People vs. Shipman* (1965) 62
13 Cal.2d 226, 231–232.) The Court of Appeal has held that under Penal Code
14 section 987.2, counties bear the expense of appointed counsel in a habeas
15 corpus proceeding challenging the underlining conviction. (*Charlton vs.*
16 *Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2
17 authorizes appointment of the public defender, or private counsel if there is
18 no public defender available, for indigents in criminal proceedings.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: E-MAIL ADDRESS (optional): FAX NO.: ATTORNEY FOR (Name):	FOR COURT USE ONLY <div style="text-align: center; font-size: 24pt; font-weight: bold;">DRAFT 4</div> <div style="text-align: center; font-size: 24pt; font-weight: bold;">09/24/03</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF In re DEFENDANT: _____, on habeas corpus Date of birth: _____ California Dept. of Corrections No. (if applicable): _____	
NOTICE AND REQUEST FOR RULING (Cal. Rules of Court, rule 4.551(a)(3)(B))	CASE NUMBER(S):

I, _____, filed a petition for writ of habeas corpus in the above entitled case in the Superior Court of California, County of *(name)*:
on *(date)*: _____.

As of this date, I have not received a ruling on the petition within 60 days of filing as required by rule 4.551(a)(3)(A) of the California Rules of Court. Therefore, I request that the court rule on the petition. (California Rules of Court, rule 4.551(a)(3)(B).) A copy of the original petition for writ of habeas corpus is attached to this *Notice and Request for Ruling*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE)

SPR03-25

Habeas Corpus: Procedure in the Superior Courts
(amend rule 4.551 and approve form CR-175, *Notice and Request for Ruling*)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Grant Barrett General Counsel Superior Court of California, County of Calaveras	A	N	Good work on rule and form. This clarification was needed. The extra time for determination promotes a more thoughtful and reasoned approach to difficult issues.	
2.	Hon. Ronald L. Bauer Orange County Rules and Forms Committee Superior Court of Orange County	A	Y	The Rules and Forms Committee of the Orange County Superior Court reviewed this item at their meeting of June 19, 2003, and agree with the proposed changes.	
3.	Ms. Linda Finn Deputy Executive Officer Superior Court of California, County of Ventura	A	N	None.	
4.	Mr. Robert Gerard President Orange County Bar Association	N	Y	<p>We are strongly opposed to the proposed changes in habeas corpus procedures set forth in SPR03-25.</p> <p>Under the proposal, the initial length of permissible unnecessary delay has been increased to sixty days, and even that limit is completely unenforceable. There is no sanction whatsoever should the court simply ignore the petition for writ. Instead, if the court has taken no action, the petitioner must file another document urging the court to rule. This seems particularly inappropriate, since the court is already under a duty to rule. (Code Civ. Proc., § 170, <i>Briggs vs. Superior Court</i> (2001) 87 Cal.App.4th 312, 318.) A litigant should not have to file additional documents to force the court to comply with this duty. Remarkably, the petitioner must not only file a “Request for Ruling,” but must also file another copy</p>	<p>1. Disagree that proposal permits “unnecessary delays” of 60 days. The proposal recognizes that it is often difficult to process petitions within 30 days. However, could reduce 60 days to rule on petition 30 or 45, with good cause extension.</p> <p>2. Disagree that “virtual use” should remain, as issuance of the order to show cause invokes several procedures while no court order or notification is sent. Thus, neither the court nor parties may be aware that the petition has been deemed granted and without court or counsel, filing dates may pass and other procedural safeguards may</p>

Position: A = Agree; AM = Agree only if modified; N = Do not agree.

SPR03-25

Habeas Corpus: Procedure in the Superior Courts
(amend rule 4.551 and approve form CR-175, *Notice and Request for Ruling*)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>of the petition for writ of habeas corpus. (“Notice and Request for Ruling” form.) One wonders whether this proposal assumes that the reason the court has failed to rule is that it lost the original petition.</p> <p>This delay of at least 90 days before a court need rule (see below) will result in many petitioners, being denied effective relief when the need for prompt relief is critical, as in bail matters. Moreover, this requirement will be particularly burdensome upon those petitioners who are incarcerated. It is difficult enough as it is for a prisoner to obtain and file the documents necessary to commence a habeas corpus proceeding.</p>	<p>be required. The rule requires the original petition to be attached because the petition is not easily found in the majority of cases where the court fails to rule in a timely manner.</p>

SPR03-25

Habeas Corpus: Procedure in the Superior Courts
(amend rule 4.551 and approve form CR-175, *Notice and Request for Ruling*)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
5.	Ms. Cheryl A. Geyerman Chair Appellate Defenders, Inc.	N	N	We strongly oppose this rule. There is no deadline in the rule for granting and denying the petition. In addition, putting a rather heavy burden on the defendant to submit additional pleadings to obtain a ruling is inappropriate; once the petition is filed, it is the duty of the court to rule, and the defendant should not be required to take further steps to ensure the court discharges its own duty. Finally, we believe the extended time - from 30 days to 60 days – is unwarranted, especially now that the superior court may request an informal response. While we acknowledge workload problems the superior court may have, under the amended rule an incarcerated defendant whose habeas corpus claim is meritorious will remain incarcerated without timely recourse.	See No. 4 above.
6.	Hon. Dennis E. Murray Presiding Judge Superior Court of California, County of Tehama	A	N	The old rule had potential for needless litigation.	

SPR03-25

Habeas Corpus: Procedure in the Superior Courts
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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
7.	Mr. Laurence M. Sarnoff Assistant Public Defender Los Angeles County Public Defender	N	N	We are very strongly opposed to the proposed changes in habeas corpus procedure set forth in SPR03-25. Under the present rules, when a petition for writ of habeas corpus is filed, it must be ruled upon within 30 days unless there is good cause to extend that time period, in which case the judge to whom the petition has been presented may simply make an order extending time. There is no limit on how long a delay may be ordered for good cause. (Present rule 4.551(a)(3)(h).) Thus, there is a 30-day limit on delays in ruling that are not necessary. If there has been no ruling or extension of time within that period, then an order to show cause will be deemed issued. (Ibid.)	See No. 4 above.